

O

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

UNITED STATES OF AMERICA

v.

RODOLFO RUIZ GUTIERREZ

§
§
§
§
§
§
§
§

CRIMINAL NO. 03-cr-00648-1
CIVIL NO. L-05-cv-168

ORDER

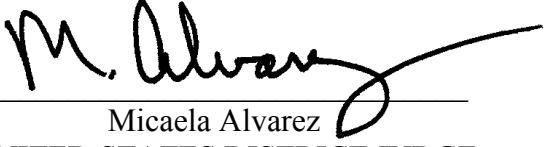
Pending before the Court is Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [Cv. Doc. No. 1]. Petitioner currently has a direct appeal, notice of which was filed July 18, 2005, pending before the United States Court of Appeals for the Fifth Circuit [*See Cr. Doc. No. 25*].

Unless extraordinary circumstances are present, a § 2255 motion should not be heard while a direct appeal is pending. *Bowen v. Johnston*, 306 U.S. 19, 26-27 (1939); *see also* 28 U.S.C. § 2255, Rule 5 advisory committee's note 1 (there is no "jurisdictional bar" to entertaining a §2255 motion during the pendency of a defendant's direct appeal, but "orderly administration of criminal law precludes considering such a motion absent exceptional circumstances").

The Petitioner in this case has failed to make the requisite showing of "exceptional circumstances;" therefore, his Motion to Vacate, Set Aside, or Correct Sentence is **DENIED WITHOUT PREJUDICE.**

IT IS SO ORDERED.

DONE this 11th day of August, 2005, at Laredo, TX.



Micaela Alvarez
UNITED STATES DISTRICT JUDGE

To Insure Proper Notice, Each Party Who Receives This Order Shall Forward a Copy of it to Every Other Party And Affected Non-party Even Though They May Have Been Sent One by The Court.